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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,593

05/18/2005

Wim Engelen

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12/23/2008

HOWREY LLP

C/O IP DOCKETING DEPARTMENT

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EXAMINER

CERNOCH, STEVEN MICHAEL

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/530,593	<b>Applicant(s)</b> ENGELEN ET AL.	
	<b>Examiner</b> STEVEN CERNOCH	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-8 and 10-20 is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

Claims 1, 3-8 and 10-20 are allowed.

### ***Claim Rejections - 35 USC § 103***

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) and furthermore in view of Adamson et al. (US Pat No 5,413,251).

Re claim 21, Capy et al. teaches a dispenser comprising a container for holding a product dispensed (Fig. 1, 5) and a dispensing mechanism (1) wherein the container further comprising a container body (5), further comprising at least one outlet opening arranged in or near the side opposite to said bottom (8), a trigger sprayer (1) and further comprising a conduit (2), a neck (11).

Capy et al. does not teach an external chamber, an air bubble or the container body have a pressure  $P_b$  or an external chamber having a pressure  $P_a$ , or that the

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container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser.

However, Dargols et al. does teach an external chamber (Fig. 1, 7), a conduct (10).

However, Adamson et al. does teach an air bubble and said pressures  $P_b$  and  $P_a$  (column 3, lines 32-52).

However, Ginther et al. does teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser (abstract, lines 6-9).

Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the conduct and external chamber of Dargols et al. to reduce the cost price (col. 3, lines 8-10), the air bubble of Adamson et al. to equalize the pressure and ensure no fluid escapes (col. 3, lines 45-52) and the container contour of Ginther et al. to allow for steady movement (abstract, last two lines).

### ***Response to Arguments***

Applicant's arguments, see pp. 6-10 and 13-15, filed 9/19/2008, with respect to claims 1, 3-8 and 10-20 have been fully considered and are persuasive. The rejections of these claims has been withdrawn.

Applicant's arguments filed 9/19/2008 with respect to claim 21 have been fully considered but they are not persuasive. Applicant's argument that the spray bottle of the combination with Adamson would leak if inclined in a downward position is fruitless since the storage tank and nozzle of Adamson are in fact inclined at a downward angle

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as observed in Figure 4. Also, the air bubble of Adamson as pointed out by Applicant in col. 3, lines 32-52 does in fact prevent leakage. Without said air bubble the fluid would just escape through without any control, the very definition of leakage.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN CERNOCH whose telephone number is (571)270-3540. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./

Examiner, Art Unit 3752

/Dinh Q Nguyen/

Primary Examiner, Art Unit 3752